

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

NASDAQ, INC.; NASDAQ ISE, LLC;  
AND FTEN, INC.;

Plaintiff,

v.

MIAMI INTERNATIONAL HOLDINGS,  
INC., et al.,

Defendant.

Civil Action 3:17-cv-06664-BRM-DEA

Hon. Brian R. Martinotti, U.S.D.J.  
Hon. Douglas E. Arpert, U.S.M.J.

**DECLARATION OF LISA A. CHIARINI, ESQ. IN SUPPORT OF MIAX'S  
MOTION TO DISMISS COMPLAINT**

I, Lisa A. Chiarini, under penalty of perjury, declare as follows:

1. I am a member of the Bar of the State of New Jersey and admitted to practice before this court. I am a partner at the firm of Reed Smith LLP, co-counsel for Miami International Holdings, Inc., Miami International Securities Exchange, LLC and MIAX PEARL, LLC (collectively, "MIAX") in the above-captioned action. I make this Declaration in support of Defendant MIAX's Motion to Dismiss Complaint.

2. Attached as Exhibit 1 to this declaration is a true and correct copy of a New York Times article authored by Nathaniel Popper titled "After Mishaps, Nasdaq Loses Standing to Rivals," dated August 23, 2013.

3. Attached as Exhibit 2 to this declaration is a true and correct copy of the emails transmitted between Tom Wittmann and “Nasdaq-to-MIAX Employees” (“NTMEs”) in March–April 2011. Content unrelated to this Motion, including personal contact information, is redacted.

4. Attached as Exhibit 3 to this declaration is a true and correct copy of a Dow Jones Business News article authored by Jacob Bunge titled “STREET MOVES: Nasdaq OMX Technologists Move to Miami,” dated April 29, 2011.

5. Attached as Exhibit 4 to this declaration is a true and correct copy of the Memorandum of Law in Support of International Securities Exchange, LLC’s Motion to Stay Proceedings, from *Chicago Board Options Exchange, Inc., v. International Securities Exchange, LLC*, 1:13-cv-01339 (S.D.N.Y. Sept. 11, 2013).

6. Attached as Exhibit 5 to this declaration is a true and correct copy of a New York Times article written by Floyd Norris titled “Nasdaq’s Sign is Great, but Does Its Market Measure Up?” dated March 17, 2000.

7. Attached as Exhibit 6 to this declaration is a true and correct copy of a New York Times article authored by Saul Hansell titled “Bugs and Squirrels Gnaw Away Nasdaq’s Image,” dated August 3, 1994.

8. Attached as Exhibit 7 to this declaration is a true and correct copy of a Reuters article authored by Sarah N. Lynch titled “Nasdaq to pay \$10 million to settle SEC charges from Facebook snafu,” dated May 29, 2013.

9. Attached as Exhibit 8 to this declaration is a true and correct copy of U.S. Patent No. 8,868,461.

10. Attached as Exhibit 9 to this declaration is a true and correct copy of U.S. Patent No. 8,874,479.

11. Attached as Exhibit 10 to this declaration is a true and correct copy of a press release by MIAX Options titled “MIAX Options Exchange Wins 2015 Institutional Trading Award for Best Infrastructure / Technology Initiative,” dated February 6, 2015.

12. Attached as Exhibit 11 to this declaration is a true and correct copy of a press release by MIAX Options titled “MIAX Options Exchange Wins 2016 Institutional Trading Award for Best Infrastructure/Technology Initiative,” dated February 25, 2016.

13. Attached as Exhibit 12 to this declaration is a true and correct copy of a press release by MIAX Options titled “MIAX Options Named Best Overall Exchange at Fund Technology and WSL Awards 2017,” dated February 15, 2017.

14. Attached as Exhibit 13 to this declaration is a true and correct copy of an entity search result for MIAX PEARL LLC, generated from the Delaware Department of State, Division of Corporations website, with incorporation date highlighted.

15. Attached as Exhibit 14 to this declaration is a true and correct copy of an Order dated March 9, 2013 from Judge Joan H. Lefkow in *Chicago Board Options Exchange, Inc. v. International Securities Exchange, LLC*, No. 07-cv-0623 (N.D. Ill).

16. Attached as Exhibit 15 to this declaration is a true and correct copy of a Final Judgment dated April 10, 2013 from Judge Joan Humphrey Lefkow in *Chicago Board Options Exchange, Inc. v. International Securities Exchange, LLC*, No. 07-cv-0623 (N.D. Ill).

17. Attached as Exhibit 16 to this declaration is a true and correct copy of U.S. Patent No. 6,618,707.

18. Attached as Exhibit 17 to this declaration is a true and correct copy of an Order dated March 31, 2016 from Judge Joan H. Lefkow in *Chicago Board Options Exchange, Inc. v. International Securities Exchange, LLC*, No. 07-cv-0623 (N.D. Ill).

19. Attached as Exhibit 18 to this declaration is a true and correct copy of an office action from the prosecution of U.S. Patent Application No. 10/771,993, dated February 3, 2016.

20. Attached as Exhibit 19 to this declaration is a true and correct copy of a Notice of Abandonment from the prosecution of U.S. Patent Application No. 10/771,993, dated October 6, 2016.

21. Attached as Exhibit 20 to this declaration is a true and correct copy of an office action from the prosecution of U.S. Patent Application No. 14/334,472, dated an August 31, 2017.

22. Attached as Exhibit 21 to this declaration is a true and correct copy of U.S. Patent No. 7,246,093.

23. Attached as Exhibit 22 to this declaration is a true and correct copy of provisional U.S. Application No. 60/106,935.

24. Attached as Exhibit 23 to this declaration is a true and correct copy of excerpts from a book authored by Robert A. Schwartz titled, “Reshaping the Equity Markets: A Guide for the 1990s,” bearing a 1993 publication date.

25. Attached as Exhibit 24 to this declaration is a true and correct copy of excerpts from a paper authored by Allan D. Grody & Hugues Levecq titled “Past, Present and Future: The Evolution and Design of Electronic Financial Markets,” dated November 1993.

26. Attached as Exhibit 25 to this declaration is a true and correct copy of International Securities Exchange, LLC’s Reply to Patent Owner’s Response in *International Securities Exchange, LLC v. Chicago Board Options Exchange, Inc.*, CBM2013-00051, before the United States Patent Trial and Appeal Board regarding U.S. Patent No. 8,266,044.

27. Attached as Exhibit 26 to this declaration is a true and correct copy of International Securities Exchange, LLC's Reply to Patent Owner's Response in *International Securities Exchange, LLC v. Chicago Board Options Exchange, Inc.*, CBM2013-00050, before the United States Patent Trial and Appeal Board regarding U.S. Patent No. 7,980,457.

28. Attached as Exhibit 27 to this declaration is a true and correct copy of International Securities Exchange, LLC's Reply to Patent Owner's Response in *International Securities Exchange, LLC v. Chicago Board Options Exchange, Inc.*, CBM2013-00049, before the United States Patent Trial and Appeal Board regarding U.S. Patent No. 7,356,498.

29. Attached as Exhibit 28 to this declaration is a true and correct copy of U.S. Patent No. 7,599,875.

30. Attached as Exhibit 29 to this declaration is a true and correct copy of U.S. Patent No. 7,921,051.

31. Attached as Exhibit 30 to this declaration is a true and correct copy of U.S. Patent No. 7,933,827.

32. Attached as Exhibit 31 to this declaration is a true and correct copy of U.S. Patent No. 7,747,506.

33. Attached as Exhibit 32 to this declaration is a true and correct copy of  
U.S. Patent No. 8,386,371.

Dated: December 4, 2017

Respectfully submitted,

/s/ Lisa A. Chiarini

Lisa A. Chiarini, Esq.

**REED SMITH LLP**

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